

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

TREVOR FITZGIBBON,)	
)	
Plaintiff,)	
)	Civil Action No. 3:19-cv-477-REP
vs.)	
)	
JESSELYN A. RADACK,)	
)	
Defendant.)	

MEMORANDUM IN SUPPORT OF MOTION TO SEAL

Defendant Jesselyn A. Radack (“Radack” or “Defendant”), by counsel, pursuant to E.D. Va. Loc. Civ. R. 5, files the instant Memorandum in Support of Motion to Seal, and in support thereof, states as follows:

1. There are three requirements for sealing court filings: (1) public notice with an opportunity to object; (2) consideration of less drastic alternatives; and (3) a statement of specific findings in support of a decision to seal and rejecting alternatives to sealing. *See, e.g., Flexible Benefits Council v. Feltman*, No. 1:08CV371, 2008 US Dist. LEXIS 93039, at *1 (E.D. Va. Nov. 13, 2009) (citing *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 288 (4th Cir. 2000)).

2. In the instant case, Plaintiff alleges several causes of action arising directly from the Settlement Agreement entered into by the parties resolving the prior lawsuit (Case No. 3:18-cv-247-REP) (the “Prior Lawsuit”).

3. It is important that for purposes of evaluating the merits of Defendant’s Motion to Dismiss (Dkt. No. 7) that the Settlement Agreement be read as a whole and not only the select provisions relied upon by Plaintiff in his Complaint.

4. The Settlement Agreement at issue contains a confidentiality clause which was agreed to by the parties.

5. Additionally, the nature of the claims and counterclaims contained in the Prior Lawsuit, and the instant case, are deeply personal and implicate third parties. The Settlement Agreement includes reference to personal identifiers of third parties, although they are not signatories to the agreement itself.

6. In order to maintain the confidentiality provided for in the Settlement Agreement, avoid disclosure of personal identifiers of third parties, and to avoid further exposure of the confidential aspects concerning the settlement of the Prior Lawsuit to discourse in social media and otherwise, Defendant requests leave to file the Settlement Agreement under seal, pursuant to E.D. Va. Loc. Civ. R. 5.

7. The US Bankruptcy Court for the District of Columbia previously approved Defendant's request to file the Settlement Agreement under seal in connection with Case No. 18-00634-SMT. *See* Dkt. No. 83.

8. Defendant has met the public notice requirement by filing a separate Notice of the Motion to Seal for docketing.

9. Defendant believes there are no less drastic alternatives that appropriately enable the Settlement Agreement to be read as a whole, Defendant to present its defenses, and to preserve the confidential nature of the document.

10. Defendant requests that the Settlement Agreement should remain sealed until the final resolution of this matter and then returned to counsel.

WHEREFORE, Defendant Jesselyn A. Radack, respectfully request that this Court enter an order granting Defendant's request to seal this material and grant such other and further relief as is just and proper.

Dated this 10th day of September, 2019

/s/ D. Margeaux Thomas
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Counsel for Defendant Jesselyn A. Radack

CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2019, a copy of the foregoing document was filed with the Court electronically. Notice of this filing will be sent automatically by the Court's CM/ECF system to the following parties:

Steven S. Biss
300 West Main Street, Suite 102
Charlottesville, VA 22903
Counsel for Plaintiff

/s/ D. Margeaux Thomas
D. Margeaux Thomas (VSB #75582)